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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Janelle M Gephart,
10 Plaintiff,

11 v.

12 TD Bank NA, et al.,
13 Defendants.
14

NO. CV-22-01652-PHX-SMM

**ORDER SETTING RULE 16
PRELIMINARY PRETRIAL
CONFERENCE**

15 This matter now being ready for a pretrial conference,

16 **IT IS HEREBY ORDERED** that pursuant to Rule 16 of the Federal Rules of Civil
17 Procedure a Preliminary Pretrial Conference is set for January 20, 2023 at 11:00 a.m. before
18 the Honorable Stephen M. McNamee in Courtroom #401, fourth floor, Sandra Day
19 O'Connor U.S. Courthouse, 401 W. Washington Street, Phoenix, Arizona 85003.

20 ***** NOTICE *****

21 **IT IS FURTHER ORDERED:**

22 1. **COUNSEL WHO WILL BE RESPONSIBLE FOR TRIAL OF THE**
23 **LAWSUIT FOR EACH PARTY SHALL PERSONALLY APPEAR AND**
24 **PARTICIPATE IN THE PRELIMINARY PRETRIAL CONFERENCE.**

25 Counsel for all parties are directed to Rule 16 of the Federal Rules of Civil
26 Procedure for the objectives of the conference. At least one of the attorneys for each
27 party attending the conference shall have authority to enter into stipulations and
28 make admissions regarding all matters which may be discussed.

1 2. **IN ADDITION TO COUNSEL OF RECORD, EACH PARTY, OR A**
2 **REPRESENTATIVE OF EACH PARTY (WHO IS NOT COUNSEL OF**
3 **RECORD) WITH BINDING SETTLEMENT AUTHORITY IF THE PARTY**
4 **IS AN ENTITY, SHALL BE PRESENT AT THE PRELIMINARY**
5 **PRETRIAL CONFERENCE. NO PARTY OR COUNSEL SHALL BE**
6 **EXCUSED FROM PERSONALLY APPEARING AT THE CONFERENCE**
7 **WITHOUT PRIOR PERMISSION OF THE COURT. See Fed. R. Civ. P. 16(f).**
8 **Parties who wish to appear telephonically must submit a motion or stipulation**
9 **stating good cause for doing so no less than one week before the Preliminary**
10 **Pretrial Conference.**

11 3. Counsel must be prepared to discuss what the parties must prove in order to
12 prevail on their respective claims or defenses at the time of the Preliminary Pretrial
13 Conference.

14 4. Counsel should be prepared to discuss logistical matters.

15 **IT IS FURTHER ORDERED** that all parties are directed to meet at least twenty-
16 one (21) days before the Preliminary Pretrial Conference, in accordance with Rule 26(f) of
17 the Federal Rules of Civil Procedure, to discuss the following matters:

18 1. The possibility of consent to trial before a United States Magistrate Judge
19 pursuant to 28 U.S.C. § 636(c), the suitability for referral of this matter to this
20 District's court-annexed voluntary arbitration program or any other alternative
21 dispute resolution mechanism, or the reference of this matter to a special master;

22 2. Any matters relating to jurisdiction, venue, or the joinder of additional
23 parties;

24 3. The nature and bases of their claims and defenses and the possibilities for a
25 prompt settlement or resolution of the case;

26 4. A schedule of all pre-trial proceedings;

27 5. Modification of pre-trial procedures due to the simplicity or complexity of
28 the case;

1 6. Arrangements for Initial Disclosures in compliance with Rule 26(a)(1) of the
2 Federal Rules of Civil Procedure. Unless otherwise stipulated in writing by the
3 parties or otherwise directed by a written Order of this Court, Initial Disclosures
4 shall be made at the initial Rule 26(f) case management meeting or within fourteen
5 (14) days after the meeting; and

6 7. Any other matters which counsel may feel will help dispose of the matter in
7 an efficient manner.

8 **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of
9 Civil Procedure 26(a) the parties shall file with the Clerk of the Court a Notice of Initial
10 Disclosure; copies of the actual disclosures shall therefore not be filed.

11 **IT IS FURTHER ORDERED** that at the Rule 26(f) case management meeting, the
12 parties shall develop a **Proposed Case Management Plan** which shall include brief
13 statements or proposals concerning:

14 1. The nature of the case, setting forth in brief statements the factual and legal
15 basis of plaintiff's claims and defendant's defenses;

16 2. A list of the elements of proof necessary for each count of the complaint and
17 each affirmative defense. Where the burden of proof shifts, each party shall list the
18 elements of the claim or defense that the party must prove in order to prevail. The
19 list of the elements of proof must contain citations to relevant legal authority (i.e.,
20 United States statutory and/or administrative law, U.S. Supreme Court case law,
21 Ninth Circuit Court of Appeals case law, Arizona state case and statutory law, or
22 other authority as dictated by conflicts of law rules);

23 3. The factual and legal issues genuinely in dispute, and whether they can be
24 narrowed by stipulation or motion;

25 4. The jurisdictional basis of the case, citing specific statutes;

26 5. Parties, if any, which have not been served, as well as parties which have not
27 filed an answer or other appearance. Unless counsel can otherwise show cause, a
28 proposed form of order shall accompany the joint Case Management Plan which

1 dismisses any party which has not been served, or seeks default judgment on any
2 non-appearing party;

3 6. The names of parties not subject to the Court's jurisdiction;

4 7. Whether there are further dispositive or partially dispositive issues to be
5 decided by pretrial motions, and the legal issues about which any pretrial motions
6 are contemplated;

7 8. Whether the case is suitable for reference to arbitration, to a special master,
8 or to a United States Magistrate Judge for trial;

9 9. The status of related cases pending before other judges of this Court or before
10 other courts;

11 10. Suggested changes, if necessary, in the timing, form, or requirement for
12 disclosures under Rule 26(a), Federal Rules of Civil Procedure, including a
13 statement of when Initial Disclosures were made or will be made;

14 11. Proposed specific dates for each of the following:

15 a. A deadline for the completion of fact discovery;¹

16 b. Dates for full and complete expert disclosures under Federal Rule of
17 Civil Procedure 26(a)(2)(A)-(C);

18 c. A deadline for completion of all expert depositions;

19 d. A deadline for filing dispositive motions;

20 e. A date by which the parties shall have engaged in good faith
21 settlement talks;

22 12. The scope of discovery and whether discovery should be conducted in phases
23 or should be limited to or focused upon particular issues. For example, where
24 dispositive motions will be filed (e.g., motions for summary judgment or a defense
25 relying on the statute of limitations), counsel should consider limiting discovery to

26
27 ¹ The discovery deadline is the date by which all discovery must be completed. Discovery
28 requests must be served and depositions noticed sufficiently in advance of this date to
ensure reasonable completion by this deadline, including time to resolve discovery
disputes. Absent extraordinary circumstances, the Court will not entertain discovery
disputes after this deadline.

1 the issue at hand until the court has ruled on the motion. Counsel should keep in
2 mind that the Rule 26(b)(1) scope of discovery has been changed, that
3 proportionality is now part of the scope of discovery, and that the “reasonably
4 calculated to lead” language has been deleted from the rule. The intent of these
5 changes is not to deprive parties of evidence reasonably needed to prove their claims
6 or defenses, but instead to ensure that discovery is relevant and proportional to the
7 needs of the case;

8 13. Suggested changes, if any, in the limitations on discovery imposed by the
9 Federal Rules of Civil Procedure and LRCiv 16.2;

10 14. Estimated date that the case will be ready for trial, the estimated length of
11 trial, and any suggestions for shortening the trial;

12 15. Whether a jury trial has been requested and whether the request for a jury
13 trial is contested. If the request for a jury trial is contested, the Proposed Case
14 Management Plan shall set forth the reasons that a trial by jury is in dispute;

15 16. The prospects for settlement, including any request to have a settlement
16 conference before another United States District Court Judge or Magistrate Judge,
17 or other request of the court for assistance in settlement efforts; and

18 17. Any other matters which counsel feel will aid the Court in resolving this
19 dispute in a just, speedy, and inexpensive manner.

20 **IT IS FURTHER ORDERED** that all deadlines to which the parties stipulate in
21 the Proposed Case Management Plan shall fall on a Friday barring extenuating
22 circumstances which make doing so impracticable.

23 **IT IS FURTHER ORDERED** that counsel shall jointly file their Proposed Case
24 Management Plan with the Clerk of the Court **not less than five (5) business days** before
25 the Preliminary Pretrial Conference. Absent extraordinary circumstances, no extensions of
26 time will be granted.

27 **IT IS FURTHER ORDERED** that it is the responsibility of counsel for the
28 Plaintiff(s) to initiate the communications necessary to prepare the joint Proposed Case

1 Management Plan. Once contacted by counsel for Plaintiff(s), counsel for Defendant(s)
 2 shall act in an expeditious manner to effectuate the preparation of the Case Management
 3 Plan.

4 **IT IS FURTHER ORDERED** that counsel for all parties are expected to comply
 5 with Rule 26 of the Federal Rules of Civil Procedure, and to minimize the expense of
 6 discovery.

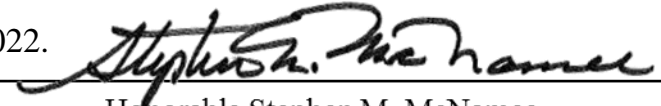
7 **IT IS FURTHER ORDERED** that the Court, after consultation with counsel and
 8 the parties, will enter a Rule 16(b) Scheduling Order concerning, inter alia, discovery and
 9 dispositive motions. To the extent that the Court's Rule 16 Scheduling Order differs from
 10 the parties' Proposed Case Management Plan, the provisions of the Court's Order shall
 11 supersede the parties' Proposed Case Management Plan and shall control the course of this
 12 action unless modified by subsequent Order of this Court. The parties and their counsel are
 13 all cautioned that the deadlines set in the Rule 16 Scheduling Order shall be strictly
 14 enforced.

15 **IT IS FURTHER ORDERED** that counsel review the requirements of LRCiv 7.1
 16 and LRCiv 7.2, Rules of Practice of the United States District Court for the District of
 17 Arizona, with their administrative/support personnel to ensure that all pleadings are in
 18 compliance with the rules.

19 **IT IS FURTHER ORDERED** that this Court views the Preliminary Pretrial
 20 Conference as critical to its case management responsibilities and the responsibilities of
 21 the parties under Rule 1 of the Federal Rules of Civil Procedure. **FAILURE TO**
 22 **COMPLY WITH EVERY PROVISION OF THIS ORDER MAY LEAD TO**
 23 **SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 16(f).**

24 **IT IS FURTHER ORDERED** that the Clerk of the Court send copies of this Order
 25 to any party appearing in propria persona.

26 Dated this 12th day of December, 2022.

27 
 28 Honorable Stephen M. McNamee
 Senior United States District Judge